



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

February 5, 2020

Memo Endorsement

In light of the government's consent to vacate Count Four of defendant's conviction, defendant's Section 2255 petition (Dkt. 171, 03-cr-1315; Dkt. 1, 16-cv-5022) is granted and the Clerk's Office is directed to close the civil case (16-cv-5022). An amended judgment has been entered to so reflect. (Dkt. 208, 03-cr-1315).

Dated: August 10, 2020

USDT

8/10/2020

Honorable Lewis A. Kaplan
United States District Court for the
Southern District of New York
500 Pearl St.
New York, NY 10007

Re: *United States v. Guido Cuevas*
Docket Nos. 03 Cr. 1315 (LAK), 16 Civ. 5022 (LAK)

Dear Judge Kaplan:

The Government respectfully submits this letter in connection with defendant Guido Cuevas's motion under 28 U.S.C. § 2255 (the "2255 Motion") and the upcoming resentencing scheduled for March 18, 2020 at 4:00 pm. For the reasons set forth below, the Government respectfully requests that the Court cancel the resentencing and instead enter an amended judgment to account for the Supreme Court's decision in *United States v. Davis*, 139 S. Ct. 2319 (2019). Amy Gallicchio, Esq., counsel for Cuevas, consents to the Government's request.

Cuevas was convicted, after trial ending on March 22, 2005, of (i) conspiracy to distribute and possess with intent to distribute cocaine, in violation of 21 U.S.C. §§ 846 and 841(b)(1)(A) (Count One); (ii) attempted possession with intent to distribute cocaine, in violation of 21 U.S.C. § 841(b)(1)(A) (Count Two); (iii) conspiracy to commit Hobbs Act robbery, in violation of 18 U.S.C. § 1951 (Count Three); and (iv) possession of a firearm in relation to a crime of violence, in violation of 18 U.S.C. § 924(c) (Count Four). He was sentenced to 188 months' imprisonment on Counts One through Three, and a consecutive term of 60 months' imprisonment on Count Four. In December 2015, the Court granted the defendant's motion for a reduction in sentence pursuant to § 3582, and resentenced the defendant to 151 months' imprisonment on Counts One through Three, and a consecutive term of 60 months' imprisonment on Count Four. The defendant was released from custody on or about September 13, 2019.

On or about October 15, 2019, the Court issued an order directing the Government to respond to Cuevas's 2255 Motion, which had been stayed pending the Supreme Court's decision in *Davis*. On or about December 4, 2019, after reviewing the underlying case file, the Government informed the Court that the parties were in agreement that the Section 924(c) count of conviction was predicated on a Hobbs Act robbery conspiracy that can no longer stand after *Davis*. The Court thereafter ordered the Probation Office to prepare a revised presentence report. On January 23, 2020, the Probation Office released the revised presentence report, which stated,